

U.S. Department of Energy
Washington, D.C.

ORDER

DRAFT
DOE O 343.1

Approved: XX-XX-07

SUBJECT: FEDERAL SUBSTANCE ABUSE PROGRAM

1. **PURPOSE.** The Department of Energy's overarching mission is to advance the national, economic, and energy security of the United States; to promote scientific and technological innovation in support of that mission; and to ensure the environmental cleanup of the national nuclear weapons complex. As a result of this responsibility for the public good as well as the sensitive nature of our mission, the agency has the responsibility to maintain a safe, healthy, and efficient working environment. Being under the influence of an illegal drug or alcohol on the job poses serious safety and health risks to the user and to all those who work with the user. The use, sale, purchase, transfer, or possession of an illegal drug on or off duty by federal employees is inconsistent not only with the laws of our country, but also with the special trust placed in employees as servants of the government. The use, possession, or being under the influence of alcohol in the workplace also poses unacceptable risks for safe, healthy, and efficient operations.

Therefore it is the policy of the Department of Energy to ensure a drug-free workplace. It is the responsibility of every employee to comply with this policy. The Department will promote this policy through its Drug-Free Workplace Program. One element of this policy is to offer, as appropriate, confidential substance abuse services through the Employee Assistance Program. Services may include prevention programs, assessment, short-term counseling, referral to community treatment programs, and follow-up counseling. A second element of this policy is to test for drug use consistent with applicable law and regulation and the rights of the Federal government and Federal employees. Employees in certain sensitive positions may be required to undergo random drug testing. Some occupational categories will require applicant testing. Additionally, reasonable suspicion and post accident/incident may require testing of an employee. Employees whose jobs require a commercial driver license and/or are part of the Human Reliability Program are also subject to alcohol testing.

2. **OBJECTIVE.** To establish the requirements and responsibilities for the Department of Energy (DOE) Federal Substance Abuse Program.
3. **CANCELLATION.** DOE Order 3792.3, *Drug-Free Federal Workplace Testing Implementation Program*, dated 07-29-88.
4. **APPLICABILITY.**
 - a. **DOE Elements.** Except for the exclusions in paragraph 3c, this Order applies to all Departmental elements. (Go to <http://www.directives.doe.gov/pdfs/reftools/org-list.pdf> for the current listing of Departmental elements. This list automatically includes all Departmental elements created after the Order is issued.)

The Administrator of the National Nuclear Security Administration (NNSA) will assure that NNSA employees and contractors comply with their respective responsibilities under this Order. Nothing in this Order will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration specific policies, unless disapproved by the Secretary.

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b. DOE Contractors. This Order does not apply to contractors.

c. Exclusions. None.

5. REQUIREMENTS. The following requirements must be read in conjunction with applicable laws, regulations, DOE directives, and provisions of local collective bargaining agreements.

a. General. DOE will administer or contract for a corporate random testing program and identify which positions and employees are subject to drug and/or alcohol testing.

b. Categories of Drug Testing. Testing for the use of illegal drugs or abuse of legal drugs may occur as follows.

- (1) Employees in the positions listed in Attachment 2, referred to as testing designated positions (TDPs), are subject to random testing.
- (2) Applicants for TDPs are subject to preemployment (also referred to as applicant) testing.
- (3) Employees in TDPs who are required to maintain a current commercial driver's license (CDL) are subject to return-to-duty testing.
- (4) Employees who volunteer to have their names included in the random testing program are treated as if they are in TDPs.
- (5) All employees are subject to postaccident or postincident (also referred to as unsafe practice), followup, or reasonable suspicion testing.

c. Categories of Alcohol Testing. The following employees and applicants are subject to alcohol testing.

- (1) Employees in TDPs that are required to maintain a current CDL are subject to random, preemployment/applicant, followup, postaccident or postincident/unsafe practice, reasonable suspicion, and return-to-duty testing.
- (2) Employees in TDPs that are in the DOE Human Reliability Program (HRP) are subject to the tests specified in paragraph 4c(1).

- d. Random Testing. This is unannounced testing of employees in TDPs who are selected for testing using random sampling techniques.
- a. Database.
 - (a) A random test database will be maintained by the Departmental substance abuse program manager, who is responsible for entering the following information into the data system:
 - 1 the title, series, organization, geographic location, and position number of the TDP and
 - 2 the employee's name associated with the TDP.
 - (b) The Departmental substance abuse program manager will be the only individual who has access to the entire random test database.
 - (c) Each local substance abuse program coordinator will provide and maintain a list of TDPs and employees subject to testing for his or her organization.
- b. Selection. Employees will be selected for testing based on a formula and schedule established by the Departmental substance abuse program manager in consultation with affected program offices (see Attachment 2 for the percentage of testing for each TDP).
- c. Testing Positive. Employees who have tested positive and been referred to the Employee Assistance Program (EAP) will be temporarily removed from the random selection process while undergoing rehabilitation if they enter a formal rehabilitation program.
- d. Vacancy Announcements. A vacancy announcement for a TDP must state that the position is subject to the DOE substance abuse program, a negative test result will be required before an offer of employment becomes final, and the applicant selected will be subject to future random testing.
- e. Notice.
 - (a) A one time notice will be issued by the applicable Departmental element to employees whose positions are subject to random testing at least 30 days before initiation of random testing. At a minimum, the notice must contain the following:
 - 1 the purpose of the testing program, which is to ensure that employees in the positions listed in Attachment 2 are able to perform the tasks of their positions safely at all times;
 - 2 a statement as to why the employee is subject to unannounced random testing;

- 3 the effective date that the employee will be subject to random testing;
 - 4 the types of tests that will be administered;
 - 5 a statement about the applicable testing procedures, also referred to as the protocol [i.e., the local substance abuse program coordinator will notify the employee's supervisor who will inform the employee when the specimen collection will be done (when the employee can be available)], in accordance with Department of Health and Human Services (DHHS) mandatory guidelines for drug testing and/or the Department of Transportation regulations;
 - 6 a statement about the impact of a confirmed positive test result (i.e., a confirmed positive test result may result in appropriate personnel or security clearance/access authorization action based on applicable laws, regulations, Executive orders, or Departmental directives);
 - 7 a statement that counseling and rehabilitative assistance are available through the EAP in the event that a test result is positive (i.e., reflects that the employee has recently used a drug or alcohol) or the employee voluntarily identifies himself or herself as a user of an illegal drug or alcohol or as an abuser of legal drugs and requests referral to the EAP; and
 - 8 a statement that the employee may file a grievance pursuant to the provisions of draft DOE O 342.X, *Grievance Policy and Procedures*, dated XX-XX-05; negotiated local agreements; or applicable appeal processes if the employee believes that—
 - a he or she should not be subject to random testing,
 - b the notice was not in compliance with this Order,
 - c the test procedure was not in compliance with the applicable directive, or
 - d a selection for testing was not done randomly or is excessive because of recent tests.
- (b) Employees must acknowledge receipt of the notice in writing or the employee's supervisor must certify that the notice was given to the employee but the employee was unwilling to sign it.

- e. Preemployment/Applicant Testing. All applicants who have been tentatively selected for a TDP will be tested.
 - (1) DOE Employees.
 - (a) In the event that the test is positive, the employee will not be selected for the TDP, the employee will be referred for counseling and/or rehabilitation, and the appropriate security officials will be notified.
 - (b) If the employee is currently in a TDP, the positive test result will be shared with the applicant's current supervisor, the employee will be referred for counseling and/or rehabilitation, and the appropriate security officials will be notified.
 - (2) Non-DOE Applicants. Non-DOE applicants who test positive will not be selected.
 - (3) Coordination. The local substance abuse program coordinator will coordinate all aspects of the testing process.
- f. Followup Testing. When an employee has tested positive or admitted use/abuse of either drugs or alcohol, based on the recommendation of the EAP provider testing may be required during or after counseling or rehabilitation up to 12 months following the last date tested or the date that a "Substance Abuse Acknowledgement" or "Last Chance Agreement" document was signed, whichever is later. (Those documents contain a commitment to cease the prohibited use of or involvement with illegal drugs or alcohol and to participate in the followup testing program.)
- g. Postaccident or Postincident/Unsafe Practice Testing. Employees who are involved in an accident or a reportable safety incident will be tested as soon as possible following the event.
- h. Reasonable Suspicion Testing. Employees will be tested when there is a reasonable suspicion that they may have engaged in substance abuse.
 - (1) Notice. A written notice, which contains an explanation of the basis for reasonable suspicion, must be given to an employee before testing due to reasonable suspicion. The fact that an employee has tested positive or has undergone a period of rehabilitation will not be used solely as grounds for reasonable suspicion testing. Such a belief may be based upon (among other things)—
 - (a) observed phenomena such as direct observation of drug use and/or the physical symptoms of being under the influence of a drug;
 - (b) a pattern of abnormal conduct or erratic behavior;

- (c) arrest or conviction for a drug-related offense or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
 - (d) information provided either by reliable and credible sources or independently corroborated; or
 - (e) newly discovered evidence that the employee has tampered with a previous drug test.
- (2) Level of Approval. The head of the Departmental element must concur in a finding of reasonable suspicion.
- i. Return-To-Duty Testing. Employees in TDPs who are required to maintain current CDLs and have been removed from their sensitive duties are subject to being tested for drugs and alcohol before being returned to their sensitive duties. When an employee has completed a rehabilitation program, the return-to-duty test may be regarded as the initial followup test. The return-to-duty test differs from a postaccident or postincident/unsafe practice test in that the postaccident or postincident/unsafe practice test normally occurs before the employee is removed from his/her sensitive duties.
- j. Return to Sensitive Duties. This section pertains to employees who have been removed from their sensitive duties.
 - (1) If an employee is in a TDP and has pursued rehabilitation, the rehabilitation facility must provide the local EAP coordinator and substance abuse program coordinator with certification that the employee has successfully completed the rehabilitation program and tested negative.
 - (2) The determination as to when the employee may be returned to sensitive duties will be made by the supervisor after consultation with the local substance abuse program coordinator and EAP coordinator or substance abuse professional for CDL holders, if applicable, and with the concurrence of the head of the Departmental element.
- k. Test Results.
 - (1) A centralized, computerized file of the outcome of all drug and alcohol tests performed at DOE will be maintained by or available to the Departmental substance abuse program manager. Local substance abuse program coordinators will have access to the results for employees in their organizations.
 - (2) When an employee has a positive test result, the employee will be notified in writing.

- l. Records. All records, including test records and chromatographic tracings, will be retained by the drug testing laboratory or alcohol testing company in such a manner as to allow retrieval of all information pertaining to the employees tested for a minimum period of 2 years after completion of testing.

6. RESPONSIBILITIES.

- a. Office of the Secretary.
 - (1) Approves or disapproves requests to include or exempt certain positions or groups of positions as TDPs.
 - (2) Approves the percentage of testing of TDPs.
 - (3) Determines whether to allow deviations from the drug testing procedures outlined in Executive Order 12564, Drug-Free Federal Workplace, September 15, 1986.
- b. Director, Office of Human Capital Management, and Administrator, National Nuclear Security Administration. Develop, implement, and administer the Departmental substance abuse testing program.
- c. Departmental Substance Abuse Program Manager.
 - (1) Provides advice and guidance on policies, standards, and procedures concerning the DOE substance abuse testing program, consistent with applicable laws, regulations, Executive orders, and mandatory guidelines.
 - (2) Maintains the substance abuse testing database and recommends approval or disapproval of requests to exempt certain positions or groups of positions from the substance abuse testing program.
 - (3) Ensures that adequate funds are requested for conducting testing programs.
 - (4) Provides for laboratory and collection services, including the medical review officer, and supplies needed for the testing program.
 - (5) Provides annual reports to DHHS on the substance abuse testing program, and provides periodic internal reports to management.
 - (6) Maintains liaison with the Office of Personnel Management, DHHS, the Departments of Transportation and Justice, and other organizations on drug and alcohol testing policy as well as other personnel-related matters.
 - (7) Evaluates the effectiveness of the DOE substance abuse testing program.
- d. Heads of Departmental Elements.
 - (1) Recommend TDPs and identify the employees in those positions.

- (2) Concur in determinations that employees who have undergone rehabilitation should be returned to sensitive duties.
 - (3) Concur in determinations that the reasonable suspicion criteria for testing have been met. This responsibility may not be redelegated further than the principal deputy level.
 - (4) Designate the elements' Substance Abuse Program coordinators
- e. Local Substance Abuse Program Coordinators.
- (1) Issue written notices to employees in TDPs.
 - (2) Coordinate the scheduling of tests with and provide results of alcohol tests to the Departmental substance abuse program manager, supervisors, affected employees, EAP coordinators, if different, and EAP service providers.
 - (3) Report positive alcohol test results to the Departmental substance abuse program manager, and report the results for all positive preemployment/applicant tests to the appropriate security officials if the applicants have security clearances/access authorizations.
 - (4) Provide written notifications to employees of positive test results.
 - (5) Maintain a local database of applicable TDPs, employees in those positions, and supervisors of those employees.
 - (6) Notify the Departmental substance abuse program manager of changes in TDPs and employees in the Departmental and local databases.
 - (7) Ensure the removal and, if subsequently warranted, the reinstatement of the names of employees in the local database.
 - (8) Administer the execution of a "Substance Abuse Acknowledgement" document.
- f. Employee Assistance Program Coordinators.
- (1) Ensure that employees who have tested positive are offered the opportunity to participate in the EAP.
 - (2) Monitor the results of counseling and rehabilitation activities in order to inform supervisors and the local substance abuse program coordinator of an employee's status.
- b. Managers and Supervisors.

- (1) Ensure that employees are available and direct them to report for scheduled testing.
 - (2) Identify, justify, and recommend employees for reasonable suspicion testing.
 - (3) Identify employees who should be tested following accidents or incidents.
 - (4) Respond to grievances related to the testing program.
 - (5) Consult with the local EAP service provider and the servicing human resources office before taking actions following the determination of an employee's use of illegal drugs or alcohol or abuse of legal drugs.
 - (6) Notify the appropriate security officials involved with security clearances/access authorizations of positive test results.
 - (7) Implement decisions on removal from sensitive duties, leave, and discipline as a result of an employee's positive test result and/or request for EAP counseling or rehabilitation due to substance abuse.
 - (8) Recommend that an employee who had been removed from sensitive duties be returned to those duties upon completion of a rehabilitation program.
- b. Medical Review Officer. Reports summaries of all activities and findings to the Departmental substance abuse program manager.
- c. Certified Breath Alcohol and Screening Test Technicians. Report test results to the local substance abuse program coordinator.

9. DEFINITIONS.

- a. Collection Site. A place where individuals present themselves for the purpose of providing urine or breath specimens to be analyzed; the collection site must possess all necessary personnel, materials, equipment, facilities, and supervision to provide for collection in privacy and provide for security, temporary storage, and transportation of urine specimens to a drug testing laboratory.
- b. Reasonable Suspicion. An articulated belief drawn from specific and particularized facts and reasonable inferences from those facts that an employee uses illegal drugs or alcohol or abuses legal drugs.

10. REFERENCES.

- a. Title 5 United States Code (U.S.C.) 552a, Records maintained on individuals, describes the protection of employee records under the Privacy Act (see <http://www4.law.cornell.edu/uscode/>).
- b. 5 U.S.C. 7301, Notes, established appropriations to support the Federal Drug Free Workplace Program (see <http://www4.law.cornell.edu/uscode/>).

- c. P.L. 102-143, Omnibus Transportation Employee Testing Act of 1991, Title V, which establishes the substance abuse testing for transportation workers (i.e., CDL holders) (see <http://thomas.loc.gov/bss/d102/d102laws.html>).
- d. P.L. 106-65, National Nuclear Security Administration Act, as amended, Title XXXII, which establishes a separately organized agency within DOE (see <http://thomas.loc.gov/bss/d106/d106laws.html>).
- e. Title 10 Code of Federal Regulations (CFR) 712, Human Reliability Program, established the DOE HRP and the substance abuse testing requirements for the employees in the HRP (see <http://cfr.law.cornell.edu/cfr/>).
- f. 49 CFR Part 40, Procedures for transportation workplace drug testing programs, established testing program requirements for the substance abuse testing of transportation workers (i.e., CDL holders) (see <http://cfr.law.cornell.edu/cfr/>).
- g. 49 CFR 382, Controlled substances and alcohol use and testing, established programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles, i.e., CDL holders (see <http://cfr.law.cornell.edu/cfr/>).
- h. Executive Order 12564, Drug-Free Federal Workplace, September 15, 1986, required agencies to establish a drug-free workplace program (see http://www.archives.gov/federal_register/codification/executive_order/12564.html).
- i. Mandatory Guidelines for Federal Workplace Drug Testing Programs (DHHS) established technical collection procedures for drug testing programs and standards for certification for drug testing laboratories (see <http://www.drugfreeworkplace.gov/ResourceCenter/r362.htm>).
- j. Vogl, W.F., and D.M. Bush. *Medical Review Officer Manual for Federal Workplace Drug Testing Programs*, DHHS, CSAP Technical Report 15, 1997, established the role and responsibilities of the MRO (see <http://drug-testing.i8.com/mro-man.htm>).
- k. DOE O 342.1, *Grievance Policy and Procedures*, dated 2-2-06, will provide guidance on processing grievances associated with the substance testing program.
- l. DOE O 472.1C, *Personnel Security Activities*, dated 3-25-03, establishes requirements for former Personnel Security Assurance Positions (PSAP), which are now part of the HRP, to be drug tested (see <https://www.directives.doe.gov/pdfs/doe/doetext/restrict/neword/472/o4721c.pdf>).
- m. DOE M 472.1-1B, *Personnel Security Program Manual*, dated 7-12-01, provides for letters of interrogatory for minor drug use and self-certifications when a PSAP/HRP employee makes a commitment to stop using drugs (see <https://www.directives.doe.gov/pdfs/doe/doetext/restrict/neword/472/m4721-1b.pdf>).

- n. DOE Order 3750.1, *Workforce Discipline*, dated 3-23-83, provides guidance on dealing with a positive test result (see <http://www.directives.doe.gov/pdfs/doe/doetext/oldord/3750/o37501c6.pdf>). (Note: Currently being updated.)
- 11. NECESSITY FINDING STATEMENT. In compliance with Sec. 3174 of P.L. 104-201 (42 USC 7274 note), DOE hereby finds that this Order is necessary for the protection of human health and the environment or safety, fulfillment of current legal requirements, and conduct of critical administrative functions.
- 12. CONTACT. Questions concerning this Order should be addressed to the Office of Human Capital Management, 202-586-8585.

BY ORDER OF THE SECRETARY OF ENERGY

CLAY SELL
Deputy Secretary

TESTING DESIGNATED POSITIONS (TDPS)
EMPLOYEE CATEGORIES, SENSITIVITY CODES, AND ANNUAL TESTING RATES

1. Positions Involving National Security. This category includes positions filled by employees having access to sensitive information or facilities; for example, national security material that it is reasonable to assume may damage the country's national interests if compromised. This category is divided into subcategories, called sensitivity codes, of employees as described below. Employees in subcategories A and B are subject to the 50 percent annual testing rate while employees in subcategories C and D are subject to the 100 percent annual testing rate. Employees in subcategory D will also be subject to alcohol testing as part of the substance abuse testing program.

Sensitivity Code	Description
A	Employees who have a Top Secret clearance or higher who have access to that information.
B	Employees who have a Top Secret clearance or higher who have access to Top Secret intelligence information.
C	Employees who have unescorted or unrestricted access to Category A nuclear reactor control rooms and/or access to Category I quantities of special nuclear material.
D	Employees who are in the Human Reliability Program (HRP).
E	(Reserved)

2. Positions Involving Public Health or Public Safety. This category includes positions filled by employees having health and safety responsibilities, usually involving a potentially dangerous instrument or machine, that could cause immediate, substantial physical injury to the public if carried out under the influence of drugs. Also included are medical positions that provide direct patient care and positions that involve work where mistakes are life-threatening and in which instant judgments are required with little opportunity for review. This category is divided into subcategories of employees as described below. Employees in all subcategories in this group are subject to the 50 percent annual testing rate.

Sensitivity Code	Description
F	Employees who are authorized to carry firearms.
G	Employees who have access to firearms.
H	Employees who serve as members of aviation flight crews.
I	Aviation personnel, including flight attendants, flight instructors, ground instructors, flight testing personnel, aircraft dispatchers, maintenance personnel, and aviation security and screening personnel.
J	Medical doctors and allied medical personnel who are responsible for direct patient care and who prescribe or administer drugs.
K	Employees who serve as direct service staff of alcohol and drug counseling programs.
L	Firefighters.

3. Positions filled by Presidential Appointees. This category is divided into subcategories as described below. All employees in this category are subject to the 50 percent annual testing rate.

Sensitivity Code	Description
M	Employees who are appointed by the President and confirmed by the Senate
N	(Reserved)

4. Positions Involving Law Enforcement. This category includes law enforcement personnel with close proximity to criminals. In DOE only one subcategory is included in this category. All employees in this category are subject to the 50 percent annual testing rate.

Sensitivity Code	Description
O	Criminal Investigators in the Office of Inspector General

5. Positions Involving the Construction, Operation, and Maintenance of Transportation or Major Electrical Equipment. This category includes all employees who are required to maintain commercial driver's licenses (CDLs). This category is divided into subcategories of employees as described below. Employees in subcategories P, Q, R, and S are subject to the 50 percent annual testing rate while employees in subcategory U are subject to the 100 percent annual testing rate. All CDL holders are subject to alcohol testing.

Sensitivity Code	Description
P	Employees who operate motor vehicles carrying passengers under 5 CFR 930.102.
Q	Employees who operate commercial motor vehicles and who are required to have a CDL under 49 CFR 391.85. This code is to take precedence over all other codes that could be assigned to this group of employees except those covered by subcategory U.
U	Employees who are in the HRP who operate commercial motor vehicles and who are required to have a CDL under 49 CFR section 391.85. This code is to take precedence over all other codes that could be assigned to HRP employees.
R	Employees who maintain or construct high voltage (600 volts or higher) electrical equipment or facilities.
S	Employees who are involved in dispatching, controlling, or the operation of high voltage (600 volts or higher) electrical equipment or facilities.

7. Other Sensitive Positions. In DOE only one subcategory is included in this category. All employees in this category are subject to the 50 percent annual testing rate.

Sensitivity Code	Description
T	Employees who are not specifically included in one of the other categories that involves public health, safety, or national security, including a supervisor or program manager who directs or oversees an employee in one of those categories. This category includes positions previously approved that didn't fall in another category and management-initiated determinations

8. Positions Filled by Volunteers. In DOE only one subcategory is included in this category. All employees in this category are subject to the 50 percent annual testing rate.

Sensitivity Code	Description
V	Employees who are not in TDPs and who request to participate in random drug testing. Such employee-initiated requests do not need Secretarial approval.